PRESENTATION TO STAKEHOLDERS ON PUBLIC HEARINGS

INTRODUCTION

1. The HMI is about to enter the final phase of the investigative process, namely, the public hearings. We have called this meeting in order to update the stakeholders on the process of the HMI in the light of the revised deadline, which, as you are by now aware, is 15 December 2016. We will focus primarily on the process that will be followed in conducting public hearings.

2. Perhaps to provide context for this presentation we should say something about the revised deadline for the completion of the HMI and its implications for the remaining process of the HMI.

REVISED DEADLINE

3. The need to extend the timeframe for the completion of the HMI, beyond the date initially Gazetted, became obvious some time ago. Since about the beginning of July 2015 we have been engaged in discussions with the Commission on the extension of the deadline. The deadline that was eventually decided upon by the Commission is 15 December 2016 and it

was published in the Government Gazette on 16 October 2015.

4. Having lived with the HMI for past two years and having observed the complexity of the issues involved in this HMI, in particular, the task involved in designing, collecting, presenting, cleaning, storing and analyzing information and data, we would have preferred a longer extension of time.

5. However, as a Panel, we have to work with the deadline that has been determined by the Competition Commission. And our task is to do our best to complete the HMI within the time allowed by the revised Terms of Reference. We are mindful of the constraints under which the Commission operates, as well as the need for the Commission to make a decision on how its limited resources are best spent. We are acutely aware of the anxiety of the stakeholders to have the HMI concluded sooner because of the financial implications involved in retaining expert and lawyers to advise them in the course of the HMI.

6. As matters stand, we are required to finalize the HMI by 15 December 2016. This deadline will obviously have a significant impact on the remaining phases of the HMI; in particular, it will require that we work with very tight

deadlines. Nevertheless, we will seek to strike a balance between adhering to these deadlines while ensuring that we do not compromise the integrity of the process. This requires the cooperation of every participant in the HMI.

7. **We hope that the spirit of cooperation, which, with very few exceptions, has characterized the HMI to date, will continue to characterize the remaining processes.**

8. **But what are the implications of the revised deadline for the remaining processes of the HMI?**

THE IMPLICATIONS OF THE REVISED DEADLINE FOR THE REMAINING PROCESSES

9. **On the same day that the revised deadline was published in the Government Gazette, a revised Administrative Timetable was published on our website. Save for the change in dates and one aspect to which we will refer shortly, the revised timetable is substantially the same as the initial timetable that was published on 1 August 2014.**

10. **While the initial timetable envisaged that public hearings will commence after the analytical work and research studies had been completed, the revised timetable contemplates that the research and analytical work will run parallel to the public**

hearings. This has been necessitated by the delay in the finalization of the analytical phase of the inquiry, which of course has now been compounded by the limited time within which the HMI must be completed.

11. As you are probably aware from your reading of the written submissions, most, if not all, submissions accept that private healthcare expenditure is high and that private healthcare inflation is higher than general inflation. However, the submissions differ markedly on the underlying reasons for high expenditure and inflation. Some submissions have sought to explain the expenditure and price inflation by reference to market power in three areas in the private healthcare sector, namely, hospital groups; medical schemes; and specialists. We should add, however, that there are conflicting views on the issue of market power, in particular, whether it exists and (if so) where it resides.

12. Many of the submissions do not provide information or data in support of assertions made. Moreover, the written submissions as a whole do not provide a complete analytical picture. The technical team has had to go through the lengthy process of identifying further information needed and requesting data and information from stakeholders on the submissions made. To date, the HMI has held in excess of 100

separate stakeholder engagements, ranging from general discussions on the roles and responsibilities of certain stakeholders, to detailed engagements on submissions, matters of confidentiality, accessing important documents and information, data requests and dealing with various queries and challenges to requests for information and data.

13. As most of you are aware, preparing data requests is a complex process. It required the HMI to determine data sets, nature and type of information as well as the format required for the presentation of data and information required. Additional expert resources had to be engaged to manage and process the analysis of data. In the end, specific data requests were sent to eight different groups of stakeholders representing in excess of 161 individual stakeholders.

14. But as was to be expected, some stakeholders required clarification on a number of issues while others were understandably concerned with the protection of confidential information, access to such information as well as security measures to protect such information. These requests for data and information required a number of detailed consultations with stakeholders concerned in order to address their concerns. In addition, a number of

stakeholders requested extensions of time, undertaking to furnish the outstanding information either at the end of June or July 2015.

15. **Although the HMI has received data from some 144 stakeholders, substantial data is still outstanding from certain groups of stakeholders. The outstanding data will continue to arrive well into public hearings. The process of processing and analyzing data will therefore still be underway.**

16. **For this reason, the analytical phase remains incomplete and will have to run parallel to the public hearings. The programme of hearings may therefore have to be adapted or supplemented in due course to accommodate this fact.**

17. **The delay in the finalization of the analytical phase hampered the preparation of position papers on key issues including the revised statement of issues. As you are aware, any revised statement of issues can only be based on an analysis — albeit provisional — of information gathered to date. We intend to publish the revised statement of issues by the end of this month. We would have preferred to publish it well before the commencement of public hearings, but pressure of meeting the deadline, together with delays in the receipt of data, has not permitted this.**

18. The program of later hearings may therefore have to be adapted or supplemented in due course to accommodate the revised statement of issues.

19. Against this background, we now wish to turn to public hearings.

PUBLIC HEARINGS

The Registration process

20. You will be aware that, according to the published timetable as it currently stands, public hearings are scheduled to commence on 1 February and conclude at the end of May 2016. For reasons that I shall explain in a moment, there will now have to be a slight alteration to that schedule.

21. Having regard to the lapse of time since the last date of registration for public hearings, we considered it desirable to reopen the process of registration for public hearings. The notice announcing the reopening of registration was published on our website on 19 November 2015. Simultaneously with this notice the intended Public Hearing Programme was published.

22. A total of sixty stakeholders have registered for public hearings. There are stakeholders who have made written submissions but who have not registered for public hearings. Since the hearings are not intended as an occasion for stakeholders to repeat what they have already submitted, but rather to deal with and answer questions on key issues, it was not expected that all stakeholders should register. Nevertheless, in some cases we may request stakeholders who have not registered for public hearings to attend public hearings.

23. It is of the utmost importance for the efficient conduct of the public hearings, and to ensure a fair process, that pre-hearing consultations with intended participants be held. This is necessary both to narrow down the key issues on which the hearings should concentrate, and to afford stakeholders a fair opportunity to prepare for their participation — having due regard to the very limited time available to us all.

24. After the closing date for extended registration for public hearings, which, was 11 December 2015, the HMI sent a notice to all stakeholders who had registered for public hearings announcing that pre-hearing consultations will be held between 19 and 21 January 2016. It turns out that the December-January holiday period has made it difficult —

perhaps impossible in some cases — for stakeholders to be adequately prepared by those dates as some stakeholders only became aware of these dates when they returned from holiday. The need to postpone pre-hearing consultations became obvious.

25. This became apparent on Monday 11 January when the HMI started contacting stakeholders to set up appointments for pre-hearing consultations. The consultations will now be held from 26 to 29 January 2016.

26. The postponement of the pre-hearing consultations affects the date of the commencement of public hearings. The public hearings are now scheduled to commence on 16 February 2016 and conclude on 9 June, that is, nine days later than they were originally scheduled to conclude. In addition, this will affect the existing Public Hearing programme as well as the revised timetable. A revised timetable as well as a revised public hearing programme will be published shortly after the conclusion of this meeting.

The HMI's Approach to Public Hearings

27. As I indicated at the outset, public hearings are intended to be the final stage of the information gathering process. That

must be understood, of course, as being subject to the need that may arise for particular information to be obtained subsequently to fill in possible gaps that may be identified, and for further engagements with particular stakeholders if the need should arise. The determination of the Panel to conduct the inquiry fairly and in a transparent manner will not be compromised.

28. Broadly speaking, the primary purpose of public hearings is to afford the public, the stakeholders, policy makers and regulators and expert witnesses as well as international experts the opportunity to debate and provide insight into healthcare markets, how they operate, and to provide evidence, if any, of market failures. At the same time they provide the opportunity to test the assertions put forward by stakeholders in their written submissions.

29. In addition, where intervention is required, they provide the opportunity for understanding the impact of any proposed recommendations, in particular, the practical implications of proposed interventions, including understanding the extent, if any, to which similar interventions in other parts of the world have been successful in addressing competition challenges and the lessons for South Africa from this experience.

30. But there is another vital purpose for public hearings: it is to educate the public about how the private healthcare sector functions. This purpose is especially important, if regard is had to the fact that access to healthcare services in our country is a fundamental right, which is guaranteed to everyone by section 27 of the Constitution. And in January last year, South Africa ratified the International Convention on Economic, Social and Cultural Rights. South Africa therefore has both the constitutional and the international obligation to ensure that everyone has access to healthcare services whether these are publicly or privately made available.

31. It is these considerations that informed our structuring of public hearings.

The structure of public hearings

32. You would have seen from the Public Hearing Programme that there are to be six sets of sessions for public hearings.

<u>First set of public hearings</u>

33. The public hearings will commence with a general session, which is intended to set the scene for the hearings. During this session and the following sessions making up the first set of hearings, we would like to hear from all stakeholders in the private healthcare sector, which includes consumers and

consumer groups; service providers comprising hospital groups and practitioners; funders and financiers, which include brokers, schemes, administrators and managed care organizations; regulators and policy makers.

34. The purpose of this session is to gain an understanding of how these groups interact with one another and their experience in interacting with one another. We hope that this session will enable the HMI, as well as the general public, to gain a better understanding of the nature of the private healthcare sector; how private healthcare services are provided and funded; and the regulatory regime for the private healthcare sector.

35. You would have noticed that the public hearing programme that was published on 19 November restricted the first set of hearings to consumers, consumer groups, other purchasers of private healthcare services, and regulators of the private healthcare sector. On reconsideration, we have decided that other stakeholders should also the opportunity to be heard during this first set of hearings. The revised programme, which will be published shortly after this meeting, will reflect that change. We believe that the introductory picture will be incomplete unless we hear all the voices that are involved in the private healthcare sector during this general session.

36. This first set of hearings will now be held during a period of four weeks commencing on 16 February and finishing on 10 March 2016. Due to limited resources these initial hearings will be held in four provinces, namely, Gauteng, KwaZulu-Natal, Eastern Cape and the Western Cape.

Second to sixth sets of public hearings

37. The first set of public hearings will be followed by a further five sets. Those will involve sessions focusing on specific aspects of competition issues such as availability of information about private healthcare services; competitive dynamics among funders and service providers and the impact regulatory framework on competition among sector stakeholders.

38. These sessions will be conducted during a period of five weeks commencing on March 29 and finishing on June 9. The intention is that the hearings will be held on Tuesdays, Wednesdays and Thursdays. There will be a break between the different sets of hearings to provide opportunity to reflect on and synthesize testimony given in the preceding sessions. These hearings will be conducted mainly at our facilities in

Pretoria. However, where it is considered appropriate, these hearings may also be held in other parts of the country.

The conduct of public hearings

39. The Panel has appointed a team of Evidence Leaders to assist with the examination of information presented at hearings. This team will also assist individuals and firms that require assistance in the presentation of their oral submissions. Of course stakeholders are entitled to retain the services of legal representatives to help them present their oral submissions.

40. The hearings will be conducted in accordance with the Guidelines published in August 2014. Items 23, 24, 25 and 29 of the Guidelines refer to the hearings themselves, while item 26 deals with pre-hearing consultations. These guidelines address most of the issues that are likely to arise in relation to public hearings. While the Guidelines do not provide every detail pertaining to those issues, such details are matters that should be dealt with at pre-hearing consultations to which we will refer again shortly.

41. One of the issues that appears to concern stakeholders time and again is the protection of confidential information. The HMI will adhere to the Guidelines dealing with presentation of confidential information at the hearing.

PRE-HEARING CONSULTATIONS

42. As already indicated, pre-hearing consultations will now take place from 26 – 29 January 2016. These consultations will be held and structured as follows:

(a) 26 January 2016 - consumers, consumer groups, organized labor and NGO's;

(b) 27 January 2016 - service providers which includes hospital groups and practitioners;

(c) 28 January 2016 - brokers, medical schemes, administrators and managed care organization administrators; and

(d) 29 January 2016 - regulators and policy makers including government.

43. We expect the first set of pre-hearing consultations to focus primarily on the first set of public hearings, which will commence on 16 February 2016. We anticipate that there will be further pre-hearing consultations that will focus on the remaining sets of public hearings. That said there is nothing to prevent a discussion on all sets of public hearings where this is feasible.

44. The purpose of pre-hearing consultations is to:

(a) Establish procedures for protecting confidential information, including the terms under which participants may have access to that information;

(b) Establish who will represent the participants at the hearings and the language in which each witness will testify;

(c) Determine the procedure to be followed at the hearing, and its expected duration;

(d) Establish a date, time and schedule for the hearing;

(e) Give directions in respect of technical or formal amendments to correct errors in any documents filed by participants;

(f) Identify issues in dispute and those that are common cause as between particular participants;

(g) Clarify and simplify the issues;

(h) Obtain admissions or confirmations of particular facts, documents or issues by particular participants;

(i) Determine when documents will be produced or delivered, whether formally or informally, if applicable; and

(j) Otherwise assist in expediting the Inquiry proceedings.

45. We would urge all participants to take advantage of these consultations to clarify any issues and to raise any concerns that they might have pertaining to public hearings. In particular, we would urge the participants to explore at these consultations the possibility of exchanging a list of witnesses to be called as well as summaries of their testimony as required by the Guidelines. Prior exchange of expected testimony is essential in preparing for each hearing.

46. As pointed out earlier, one of the major concerns of some of the stakeholders that keeps coming up is the treatment of confidential information. In September we issued Supplementary Guideline No 2, which aims to address these concerns. This Guideline sets out the framework for managing access to confidential information.

47. In addition, the Guidelines empower the Chairperson to exclude members of the public, specific persons, or categories of persons from the hearings if the information to be presented is confidential. At the pre-hearing consultations, participants must explore the practical mechanisms for protecting confidential information without paralyzing the conduct of the hearings.

48. In general we would urge the participants to work out at these pre-hearing consultations matters pertaining to public hearings in general such as the dates for the publication of hearing notices where this is possible; administrative arrangements pertaining to the public hearing and the conduct of public hearings as set out in the Guidelines. Perhaps to facilitate the smooth running of these pre-hearing consultations parties should exchange agenda items prior to the commencement of the consultations.

49. Before concluding this presentation, we need to indicate what the Panel expects of the participants.

EXPECTATION OF THE PANEL DURING PUBLIC HEARINGS

50. We would urge participants to approach the public hearings as well as the pre-hearing consultations with the same spirit of cooperation that has generally characterized the conduct of a majority of stakeholders. The office of the Inquiry Director is always open to stakeholders to raise their concerns. Indeed, I am told a number of stakeholders have constructively engaged with the technical team and that through this process of constructive engagement a number of issues have been resolved. Prehearing consultations must be used to address concerns that stakeholders might have in relation to the public hearings.

51. We sincerely hope that all stakeholders will co-operate with the HMI in the difficult process of preparing for and conducting the public hearings. We hope none will display an obstructionist attitude. In the past it has not been necessary for the HMI to resort to the provisions of the Competition Act in order to compel stakeholders to cooperate with the HMI. However, if needs be, the HMI will not hesitate to resort to those provisions to ensure that the required information is obtained. We would like to urge all stakeholders to cooperate with the HMI.

52. We wish to stress the point we made at the commencement of the HMI, namely, that this is essentially a research project undertaken to gain in-depth understanding of how the private healthcare sector functions with the objective of determining whether or not the process of competition works efficiently in this sector — and, if not, what recommendations should be made in that regard.

53. But the promotion of competition is not an end in itself; one of the objectives of promoting competition is to provide consumers with competitive prices and product choices. This objective of competition law and policy must be understood in the light of the place of healthcare services in our country.

54. Section 27 of the Constitution guarantees to everyone the right to have access to healthcare services. This constitutional right requires, amongst other things, the state to facilitate access to healthcare services regardless of who provides these services. Access is not limited to physical accessibility of premises that provide healthcare services but it also includes affordability of healthcare services. To this extent the Constitution requires the state to take reasonable legislative and other measures within its available resources in order to achieve progressive realization of the right of access to healthcare services.

55. It is therefore in the interest not just of competition law and policy that the private healthcare sector functions effectively and efficiently but in the public interest that private healthcare markets function in a manner that promotes rather than undermines the purposes of the Act.

56. We are looking forward to your continued cooperation in the further conduct of the HMI.

Thank you for your kind attention.